

From: [scott](#)
To: [Daniel Barham](#); [Hestin, Nellie E.](#); [Shaw, Jarrod D.](#); [Zachery Darnell](#)
Cc: [pSmalto](#)
Subject: RE: pSmalto - testimony schedule (rr)
Date: Tuesday, November 1, 2022 3:42:58 PM
Attachments: [image002.png](#)

Hello Mr. Barham,

Thank you for your email. As far as your questions:

Re: funds - - "Forthcoming" is good to hear.

Re: hearing testimony - - I thought I had responded to Ms. Hestin's question about content, but I cannot find that email, so I will give everyone the same answer, which is:

- The purpose for this testimony is to help me better understand and get better clarity about some prior testimony that I found (to some degree) either unclear or ambiguous, from those same people. Thus I do not think any special prep is needed, since I expect to be discussing prior topics, all related and relevant to determining the two Delegated Issues that I have been asked to address. (If, at some point, I believe that additional prep is needed, I will let you know.)
- And, yes, I expect that to occur via Zoom, with a court reporter present (which I expect the parties will coordinate the logistics for). (I think I did write about this before, which is that) I expect to be having these testimony hearings for me to primarily ask questions to help me get some clarifying information to better understand those topics that I feel I need clarifications on, as opposed to having counsel conduct the questioning.

Re: length of time - - For most of the other people, I'd think the time would be no more than an hour. But, for Ms. Venkataraman, especially since she has expressed a desire to speak with me, I'd think we'd be done in an hour or two, but should probably schedule it as 3 hours, in case her comments are longer than I anticipate.

- For Ms. Venkataraman, and with any/all other hearings, I expect that my first question will be to understand any topics that they believe I should hear. As far as "supplemental testimony", I hadn't planned on that. Remember, this isn't open-ended testimony, but simply giving me an opportunity to get better clarity on already-discussed topics. However, that being said, I'm not ruling it out at this point - - I just don't know, but I expect that how each hearing goes will dictate if any supplemental testimony is needed.

And, thank you for checking on her availability for the week of the 15th. Consistent with the Court's order "to proceed with all reasonable diligence", and because of some of the extensions that have occurred to date, I'd hope that Ms. Venkataraman can be available either on the (preferably) 15th or the 16th.

Thank you.

With best regards,

-scott.

From: Daniel Barham <dan@b-m.law>
Sent: Tuesday, November 1, 2022 8:20 AM
To: [scott <scott@pegasussquire.com>](mailto:scott@pegasussquire.com); [Hestin, Nellie E. <NHestin@mcguirewoods.com>](mailto:NHestin@mcguirewoods.com); [Shaw, Jarrod D. <JShaw@mcguirewoods.com>](mailto:JShaw@mcguirewoods.com); [Zachery Darnell <zachery@b-m.law>](mailto:ZacheryDarnell@b-m.law)
Cc: [pSmalto <pSmalto@pegasussquire.com>](mailto:pSmalto@pegasussquire.com)
Subject: RE: pSmalto - testimony schedule (rr)

Thank you for your email. We have been diligently working with Ms. Venkataraman regarding your requests. First, I can report that Ms. Venkataraman has sought to borrow funds to pay your invoices, and we understand that funds are forthcoming.

As for her testimony/discussions with you, we'd like to better understand the scope, topics, and nature of the testimony. Like Ms. Hestin requested, we too would appreciate guidance on the subject matter or areas on which you would expect her to testify. Given our stated objections to certain of your requests and anticipated consideration of QuickBooks data, potential examination of Ms. Ulbrich, and other seemingly peripheral information, we would appreciate some clarity of how you connect that information (and any of Ms. Venkataraman's testimony on the same) with the very narrow determinations required of the Delegated Issues.

Further, I expect you wish to conduct the examination via Zoom with a court reporter present. Please confirm that. We are asking Ms. Venkataraman to provide dates and times during the week of the 15th when she can be available. I expect she'll ask how long she should expect the examination to run (so she can arrange child care). What do you expect in terms of time? Finally, how do you intend to conduct the questioning? For instance, will you simply ask her questions or will you expect or allow the attorneys to participate in the examination? Will she be asked or

permitted to offer a statement in opening or closing? After you examine other persons, will Ms. Venkataraman be asked or permitted to give supplemental testimony?

Thank you.

Daniel O. Barham, Esq.

From: scott <scott@pegasussquire.com>

Sent: Monday, October 31, 2022 5:01 PM

To: Hestin, Nellie E. <NHestin@mcguirewoods.com>; Daniel Barham <dan@b-m.law>; Shaw, Jarrod D. <JShaw@mcguirewoods.com>; Zachery Darnell <zachery@b-m.law>

Cc: pSmalto <psmalto@pegasussquire.com>

Subject: RE: pSmalto - testimony schedule (rr)

Hello Mr. Barham,

I have not heard back from you or your team regarding either of my two emails from **last week** regarding testimony schedule.

I understand that Ms. Venkataraman wants to speak with me, and I'd like that to happen. So, can she be available starting on Tuesday Nov 15?

Thank you,

With best regards,

-scott.

From: scott

Sent: **Friday, October 28,** 2022 1:34 PM

To: 'Hestin, Nellie E.' <NHestin@mcguirewoods.com>; Daniel Barham <dan@b-m.law>; Shaw, Jarrod D. <JShaw@mcguirewoods.com>

Cc: pSmalto <psmalto@pegasussquire.com>

Subject: RE: pSmalto - testimony schedule

Ms. Hestin, thank you for your prompt attention and response. (FYI, I am not available on Monday the 14th, but am available on the 15th and after.)

Mr. Barham, are you able to make dates starting November 15 work?

LMK.

Thank you,

With best regards,

-scott.

From: Hestin, Nellie E. <NHestin@mcguirewoods.com>

Sent: Friday, October 28, 2022 9:25 AM

To: scott <scott@pegasussquire.com>; Daniel Barham <dan@b-m.law>; Shaw, Jarrod D. <JShaw@mcguirewoods.com>

Cc: pSmalto <psmalto@pegasussquire.com>

Subject: RE: pSmalto - testimony schedule

Mr. Cooper,

With respect to the timing for scheduling testimony, Defense counsel respectfully requests that we look at dates beginning the week of November 14. Jarrod along with other members of our team are in a jury trial at present and will be through at least the middle of next week, and we do not believe it will be feasible for us to have testimony the week of November 7. We are glad to begin to look for dates starting November 14th and later.

In addition, with respect to Ms. Elliott, we note that she provided testimony not in her individual capacity but rather as a corporate designee for Wells Fargo on particular topics requested by Plaintiffs (among many other topics they requested, for which other witnesses were designated). If possible, we would appreciate guidance on the subject matter or areas on which you would expect her to testify so that we can ensure she is adequately prepared or, if needed, offer an alternative representative to testify.

Thank you and best regards,
Nellie

Nellie E. Hestin

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From: scott <scott@pegasussquire.com>

Sent: Thursday, **October 27**, 2022 5:55 PM

To: Daniel Barham <dan@b-m.law>; Shaw, Jarrod D. <JShaw@mcguirewoods.com>; Hestin, Nellie E. <NHestin@mcguirewoods.com>

Cc: pSmalto <psmalto@pegasussquire.com>

Subject: pSmalto - testimony schedule

****EXTERNAL EMAIL: use caution with links and attachments****

Hello Mr. Barham & Mr. Shaw,

As I wrote in my Sept 27 email (see below), the third piece of clarifying info that I would like to receive is to get some testimony from the following people:

c. *Regarding testimony (in the following order):*

1. *Alecia Venkataraman*
2. *Alecia / Vimala pmk(s) re accounting database (QuickBooks?) and also sales database ("back end"?)*
3. *Brooke Ulbrich (Commando)*
4. *Janet Elliott (WF)*
5. *Mark Lanterman (CFS)*
6. *Erik Hammerquist (FTI)*

I believe that I'd like to receive the items above in that order (i.e. first A, then B, then C items). And, depending on the A and B items, and my requested sequencing of the C items, it is possible that some of the later C items may not be necessary.

Per Mr. Darnell's recent answers regarding the 3 sales spreadsheets that we were provided, I understand that he is representing that Plaintiff does not have access to either the e-commerce or back-end systems that generated the CSV files that were the basis for the 3 sales spreadsheets, and that Plaintiff does not know who caused the generation of those CSV files (either in part or in whole), nor does Plaintiff have those CSV files, then it would seem that the related PMK would be someone from the Vaden Group.

How quickly (preferably in the next 10 days, i.e. no later than the week of Nov 7) can we schedule some testimony from Ms. Venkataraman? Then, after that, for the PMK/Vaden, and then (3) and (4)? As we get through those 4, we will determine if testimony from the 2 experts is needed.

Thank you.

With best regards,

-scott.

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